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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/167,286 10/07/98 ADEDEJI

A CN-8764

EXAMINER

IM22/0213

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HOKE, V

ART UNIT

PAPER NUMBER

1714

DATE MAILED:

02/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/167,286

Applicant(s)

Adedeji et al

Examiner

V. P. Hoke

Group/Art Unit

1714

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on 11/29/00
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-9, 11-15 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 1-9, 11-15 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 14
- ☐ Interview Summary, PTO-413
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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Continued Prosecution Application

The request filed on November 29, 2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/167286 is acceptable and a CPA has been established. An action on the CPA follows.

Claim Rejections - 35 U.S.C. § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 and 11-15 are indefinite because the independent claims 1 and 11 require the presence of polyphenylene ether **and** a blend of polyphenylene ether and another resin (PC, polyetherimide, styrenic resin or thermoset resin) . It appears from the specification that what was intended to be conveyed was rather polyphenylene ether **or** a blend of polyphenylene ether and one of said other resins. Objection to these recitations was made in the advisory made in the earlier prosecution yet the instant claims recite the same error. Clarification in the next response is required.

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Claim Rejections - 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6,8,9,1-13 and 15 are rejected under 35 U.S.C. 102(b) as being fully met by Nakano.

Patentee discloses floor decks or pallets comprising flame retardant PPO/polystyrene resin blends which contain a fibrous reinforcing agent . See col.15, lines 5 and 15 and the paragraph bridging cols. 11 and 12.

Other thermoplastics may be present which include ABS resins and/ or polycarbonates.

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakano as applied to claims 1-6,8,9,11,12,13 and 15 above, and further in view of White (575) or (206) and British patent 2043083.

Nakano does not indicate whether the optional polyimide composition (col.9, line 47) encompasses polyetherimide. The White disclosures relate the latter resin's inclusion with PPO in formulating compatible molded laminated materials. Hence its selection would be obvious for inclusion in Nakano's PPO formulations suitable for floor decks or pallets.

The instant claims indicated compliance with meeting UL 2335 protocol has been noted but not found to be significant in distinguishing over Nakano since there is no indication that Nakano's compositions , regardless of a flame retardant's presence, would not meet the standards in the first place. The examples in the specification fail to point out any failure due to the absence of the flame retardant 71B in meeting those standards. Certainly ex. 3 and 4 which contain a flame retardant has not been shown less compliant than ex. 5 which is characterized as meeting " Class II Commodity Test". This achievement has not been shown unobtainable by non flame retardant PPO pallets however. Hence criticality due to the flame retardant's presence has not been established. Moreover the other flameproofed examples are as good and sometimes superior in at least 4 out of 7 property test evaluations made, as example 5. In as much as Nakano's flame retardant compounds encompass phosphates or organo halides, the data shown here , which does not measure flammability fails to establish criticality in any compound or class of compounds selection. This same criticism is applicable in choosing 71B which is a phosphate within the class

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of multi phosphate flame retardants of the British patent which are recognized burning inhibitors
for PPO/polystyrene resin blends.


VERONICA P. HOKE
PRIMARY EXAMINER

vph

February 6, 2001

703 308-2444